

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: Methyl Tertiary Butyl Ether
("MTBE") Product Liability Litigation
----- X

Master File No. 1:00-1898
MDL No. 1358 (SAS) .
M21-88

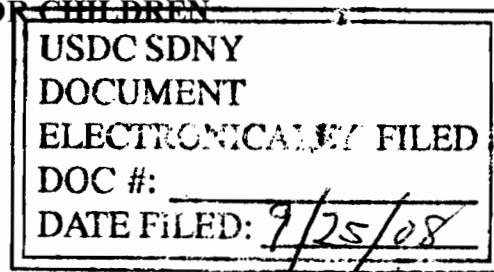
This Document Relates To:

----- X

*Brenda Abrahamson, et al. vs. Amerada Hess
Corporation, et al.*. 06 Civ. 3753

----- X

PLAINTIFFS' PETITION
FOR COURT APPROVAL
OF SETTLEMENTS FOR
MINOR CHILDREN



I. INTRODUCTION.

Plaintiffs in the *Abrahamson* matter include over 400 claimants in Wisconsin, seeking to recover damages for injury to their property caused by MTBE contamination and for the costs of medical monitoring because they ingested MTBE through contaminated water for various time periods. A number of the claimants are minor children who were exposed to MTBE-contaminated water at their homes and/or schools. The Minor Claimants, represented in this litigation by their natural parents, are not well owners or property owners. Their sole claim is for medical monitoring based upon their exposure to MTBE.

Plaintiffs negotiated a settlement with the majority of the Defendants early in 2008, and this Court signed an Order on June 3, 2008 approving the settlements to be paid to the minors from that settlement. Neither Lyondell Chemical Company nor TOTAL Petrochemicals, Inc. participated in that first settlement but have now agreed to settlement. The substantive terms of this settlement with Lyondell and TOTAL are similar, and in many cases identical, to the settlements previously approved by this Court. The settlement proceeds identified in paragraph

V, below, reflect the same formula used in the prior settlement and approved by this Court while the numbers are substantially different and correspond to the total settlement amounts paid by Lyondell and TOTAL.

Plaintiffs now ask the Court to approve the settlements for the minor children recently negotiated with Lyondell and TOTAL.

Plaintiffs do not anticipate any objection by Defendants.

II. MINORS INGESTED, INHALED, AND ABSORBED MTBE AT HOME AND/OR AT SCHOOL.

The minor children in the *Abrahamson* matter now range in age from eight to eighteen years old. *See* Exhibit A, attached. Some lived in homes that were supplied water by MTBE-contaminated private wells. Others attended local schools whose water supplies were contaminated with MTBE. And some were exposed to MTBE at both home and school. Thus, these children had many opportunities to ingest MTBE — not only orally (by drinking the water) but also dermally (by absorption during bathing or cleaning). Additionally, they may have inhaled MTBE vapors created by heating water for showering and cooking. The full effects of this exposure are unknown, but there is evidence linking MTBE exposure to serious disease and cancer.

III. MEDICAL MONITORING IS APPROPRIATE GIVEN THE MINORS' EXPOSURE HISTORIES.

According to the Agency for Toxic Substances and Disease Registry, biological tests such as urinalysis or blood chemistry analyses are useful tools for finding health problems early in people exposed to volatile organic chemicals in drinking water supplied by private wells. *See* New York State Department of Health, *Public Health Assessment: Cayuga County Groundwater Contamination, Union Springs, New York* (EPA Facility ID: NYN000204289) (June 11, 2003),

available at http://www.atsdr.cdc.gov/HAC/PHA/cayugacounty/cay_toc.html (last accessed May 30, 2008). In evaluating health effects of environmental contaminants, the ATSDR and NYS DOH “recognize that children are of special concern because of their greater potential for exposure from play and other behavior patterns.” *Id.*

The health of the *Abrahamson* minors is also of special concern. They were exposed daily to a volatile organic chemical known to be an animal carcinogen and deemed a possible human carcinogen by EPA. Based on their daily exposures and the possible health effects, the minor children here sought damages for the costs of medical monitoring.

The law recognizes a claim for the costs of medical monitoring under such circumstances. A plaintiff seeking damages must generally prove that: (1) he or she was significantly exposed to a proven hazardous substance through the negligent actions of the defendants; (2) as a proximate result of exposure, plaintiff suffers a significantly increased risk of contracting a serious latent disease; (3) the increased risk makes periodic examinations reasonably necessary; and (4) monitoring and testing procedures exist which make the early detection and treatment of the disease possible and beneficial. *In re Paoli R.R. Yard PCB Litigation (Paoli III)*, 113 F.3d 444, 458-59 (3d Cir. 1997). The value of medical monitoring claims is generally based on age. *See generally Cain v. Armstrong World Industries, et al*, 785 F.Supp. 1448 (S.D.Ala. 1992).

IV. SETTLEMENT IS IN THE BEST INTEREST OF THE MINORS.

If these minors were to proceed to trial rather than accept the settlements offered, they would have to present evidence establishing those elements, each of which would be hotly contested in a battle of experts. After that battle, the jury could reject altogether the notion of giving the minors money when they have no present injury. Or the jury might find that plaintiffs had not met their burden on any one element, or the jury might find for plaintiffs but award less

than the settlement amounts. Even if the minors prevailed at trial, their success could be vulnerable on appeal; a favorable verdict could be reversed or a new trial ordered. In other words, the minors could lose at trial or on appeal (on any one of a number of grounds) after difficult, time-consuming, expensive litigation.

Of course, even trial of the minors' claims is at least a few years off. Only minimal discovery has been conducted in the *Abrahamson* matter. With respect to the medical monitoring claims specifically, no experts have provided opinions regarding the type of testing that would be appropriate, a recommended protocol for screening, or the typical costs associated with such a program. Nor has plaintiff-specific medical discovery been performed to determine any particular minor's current health status or risk of future disease. So any potential outcome — positive or negative — would be delayed for an indeterminate time. In the *Paoli* litigation, which also involved exposure to toxic chemicals, the defendants prevailed at trial and on appeal after thirteen years of litigation. 221 F.3d at 454. Here, it is simply not in the minors' best interest to engage in litigation that promises risk and almost certainly involves years of litigation.

In short, settlement avoids all the uncertainty and delay of litigation, provides reasonable compensation, and ensures that the minor children will have financial resources now to seek appropriate medical screening and care as they mature. The settlement amounts are reasonable given the difficulties of proving their claims at trial and the all-too-real risk that after years of litigation, they might not recover anything at all.

V. THE SETTLEMENT AMOUNTS ALLOCATED TO MINORS ARE REASONABLE.

In addition to the 69 minors, approximately 300 adult plaintiffs also stated claims for medical monitoring costs. The age of each claimant was taken into account in allocating settlement funds. Because younger claimants are generally at greater risk for health effects

caused by exposure to environmental contaminants, the younger claimants received higher settlement allocations. The gross settlement figures were graduated as follows:

<u>AGE</u>	<u>NUMBER OF PLAINTIFFS</u>	GROSS SETTLEMENT <u>LYONDELL</u>	GROSS SETTLEMENT <u>TOTAL</u>
18 and under	69	\$ 26.81	\$ 60.43
19-36	162	\$ 21.66	\$ 48.82
37-55	101	\$ 16.50	\$ 37.20
56 and over	56	\$ 11.34	\$ 25.56
<u>TOTAL</u>	388	\$ 7,659.74	\$17,226.96

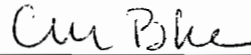
According to this allocation, the 69 minor children each receive a larger amount than any of the adults. This division recognizes both their greater vulnerability to contaminants and their longer expected life spans. Simply put, the minors may have been affected more severely by MTBE than the adults, and the minors face a longer period of uncertainty about the latent physical results of their early exposure. The settlement would allow the minors to undergo annual physical examinations - which would include, at the discretion of their individual physicians, blood work and any other diagnostic testing.

VI. CONCLUSION.

Plaintiffs submit this Petition for Court Approval of Lyondell and TOTAL Settlements for Minor Children. Plaintiffs ask that the Court approve the settlements as listed on Exhibit A, attached.

DATED: September 17th, 2008.

RESPECTFULLY SUBMITTED,



Carla M. Burke
Scott Summy
M. Cristina Sanchez
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219-4281
Telephone: (214) 521-3605
Facsimile: (214) 520-1181

Robert J. Gordon
Robin L. Greenwald
WEITZ & LUXENBERG, P.C.
180 Maiden Lane, 17th Floor
New York, NY 10038-4925
Telephone: (212) 558-5505
Facsimile: (212) 558-5506

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' PETITION FOR COURT APPROVAL OF SETTLEMENTS FOR MINOR CHILDREN** and **[PROPOSED] ORDER** was served on all counsel of record by posting it directly to LexisNexis File & Serve on the 17th day of September, 2008.



SHELLY SHETLER

EXHIBIT A

TOTAL PETROCHEMICALS USA, INC.

TOTAL

PETROCHEMICALS

Gross Settlement

**Total payment to client
(Lyondell and Total
Petrochemical)**

LYONDELL										TOTAL PETROCHEMICALS USA, INC.									
LYONDELL						TOTAL				PETROCHEMICALS						Total payment to client (Lyondell and Total Petrochemical)			
Client Name	Gross Settlement Amount	Fee %	Gross Atlys Fees	Gross Expenses	Net to Client	Gross Settlement Amount	Fee %	Gross Atlys Fees	Gross Expenses	Net to Client									
Kust, Katie J.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Maass, Aaron	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Maass, Eric T.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
McHugh, Faith Maryann	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Randerson, Benjamin	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Randerson, Emily S.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Randerson, Hayley R.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Randerson, Justin	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Reed, Mathew	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Reed, Timothy	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Rude, Samantha Taylor	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Schiltz, Katelyn	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Schiltz, Krystal	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Schuh, Eric	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Schuh, Jamie	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Tank, Jeremiah J.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Tank, Justin P.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Van Boxtel, Alex	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Van Boxtel, Arica	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Van Dyn Hoven, Julie	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Van Eperen, Asleigh J.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Van Eperen, Erik W.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
VanCamp, Kevin Patrick	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vandenbergh, Amanda Marie	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
VanEperen, Jill M	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vanhandel, Gary M.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vanhandel, Stacy M.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vansanbeek, Michael John	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vansanbeek, Robert John	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Verhasselt, Derek J.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Verhasselt, Kylie A.	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Verhasselt, Nicole Marie	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								
Vosters-Bucholtz, Anthony Ja	26.81	33 1/3	8.94	-	17.87	60.43	33 1/3	20.14	-	40.29	58.16								